Leong Moh Sawmill Co Sdn Bhd (In liquidation) v Standard Chartered Bank & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-598-1995
SITI NORMA YAAKOB, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA
18 JULY 1996

Civil Procedure *— Parties — Substitution of parties — Foreign bank transferred and vested all banking business in Malaysia to locally incorporated bank — Vesting order made pursuant to s 50(1) of Banking and Financial Institutions Act 1989 — Whether foreign bank need to substitute successor bank as plaintiff in all matters relating to foreclosure proceedings initiated earlier pursuant to O15 r 7(2) of Rules of the High Court 1980 — Rules of the High Court 1980 O15 r 7(2)*

Land Law *— Sale of land — Public auction — Foreign bank transferred and vested all banking business in Malaysia to locally incorporated bank — Vesting order made pursuant to s 50(1) of Banking and Financial Institutions Act 1989 — Foreclosure proceedings initiated earlier by foreign bank against successor bank — Failure by foreign bank to cite successor bank as plaintiff in proclamation of sale issued pursuant to directions for sale — Whether in breach of s 258(1)(b) and (2)(a) of National Land Code 1965 — Banking and Financial Institutions Act 1989 s 50(1) — National Land Code 1965 s 258(1)(b) & (2)(a) — Rules of the High Court 1980 O15 r 7(2)*

Words and Phrases *— 'Notwithstanding anything in any law or in any rule of law' — Banking and Financial Institutions Act 1989 s 50(3)*

The appellant, who was the registered proprietor of two parcels of land ('the lands'), charged the lands to the Standard Chartered Bank ('the predecessor bank') to secure loans granted to it. The appellant then defaulted, and the predecessor bank instituted foreclosure proceedings against the appellant. On 4 October 1985, the predecessor bank obtained an order of court to sell the lands by way of public auction. On the eve of the auction, the parties agreed to adjourn the auction indefinitely to enable the matter to be settled out of court. However, the negotiations for settlement failed. The predecessor bank accordingly filed a summons in chambers, for a fresh auction date and further directions for sale. Meanwhile, the predecessor bank, which was a foreign bank, had transferred and vested all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd ('the successor bank'), a separate legal entity incorporated locally, pursuant to a sale and purchase agreement, and after obtaining the approval of the Minister of Finance under s 49(7) of the Banking and Financial Institutions Act 1989 ('the Act'). The court had also granted a vesting order to the successor bank under s 50(1) of the Act, and fixed 1 July 1994 as the effective date for the transfer of the business. Subsequently, the summons

in chambers filed by the predecessor bank earlier was heard, and the court fixed 13 March 1995 as the new auction date. All proceedings in this matter continued in the name of the predecessor bank as the plaintiff. At the auction, the second and third respondents bidded successfully for the lands, and they paid 10% of the purchase price. The proclamation of sale still had the predecessor bank as the plaintiff. On 3 April 1995, the appellant filed an application to set aside the auction and to annul the sale of the lands, on the grounds that: (i) the failure by the predecessor bank to cite the successor bank as the plaintiff in the proclamation of sale issued pursuant to the directions for sale constituted a breach of s 258(1)(b) and (2)(a) of the National Land Code 1965 ('the NLC'); (ii) that breach amounted to an impropriety in the subsequent conduct of the sale within the meaning enunciated in *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294 ('*Siland's* case') so as to entitle the appellant as the chargor to nullify the sale; and (iii) the illegal sale had prejudiced the appellant's right to redeem the lands. The trial judge held that s 258(1)(b) and (2)(a) had not been breached, and that there was no improper conduct as envisaged by *Siland's* case. The appellant's application was thus dismissed with costs, and the issuance of Form 16F in favour of the second and third respondents was stayed. The appellant appealed. The issue which arose was whether the predecessor bank could continue to pursue proceedings in its name after it had already sold and vested all its banking business in Malaysia to the successor bank.

Held, dismissing the appeal with costs, and affirming the findings of the trial judge:

(1) The court did not see how the provisions of s 258(1)(b) and (2)(a) of the NLC had been breached by the predecessor bank as all procedural steps laid down by the two sub-sections had been adhered to by the predecessor bank through the court-appointed auctioneer and the senior assistant registrar (see p 623F).

(2) The vesting order was such that there was no requirement in law to effect a substitution of the plaintiff, and its effect was that the successor bank was deemed to be a party in all proceedings that were initiated by or commenced against the predecessor bank. This meant that the successor bank was very much a party to the order of sale obtained (see pp 623G and 624A–B).

(3) Section 50(3) of the Act provides, inter alia, that the transfer of any property or business pursuant to the order of the High Court under sub-s (1) shall on and from the transfer date become vested in or held by the transferee, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law. Thus, by virtue of the vesting order, there had been a transmission of interest from one legal entity to another (see p 624D–H).

(4) Under the provisions of O15 r 7(2) of the Rules of the High Court 1980, there may be a substitution of the proper party to continue with the proceedings. However, by virtue of the qualifying words 'notwithstanding anything in any law or in any rule of law' appearing in s 50(3) of the Act, there was no necessity for a formal order under O 15 r 7(2) to regularize the position of the successor bank (see p 624H–I).

(5) If indeed there was any irregularity committed by the predecessor bank, it was merely its failure to withdraw and allow the sale to be conducted by the successor bank. That could be achieved by the mere production of the vesting order (see p 624I).

(6) In any event, that omission was not the sort of impropriety envisaged by *Siland*'s case, where the conduct sought to be impugned amounted to a reckless disregard of the interests of an interested party. That could not be the case here, as what was being challenged was not the interest of any party but the wrong use of a name which by virtue of the particular provisions of the vesting order and the provisions of s 50(3) of the Act, could not have the effect of rendering the proclamation of sale improper and the subsequent sale annulled (see p 625A–B); *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294 distinguished; *Standard Chartered Bank v Asia Transport Services Sdn Bhd & Ors* [1996] 1 MLJ 157 overruled.

(7) As this court had already concluded that there was no breach of the statutory requirements of ss 258(1)(b) and (2)(a) of the NLC, the question of prejudice did not arise (see p 626B).

[**Bahasa Malaysia summary**:

Perayu, yang merupakan tuan punya berdaftar dua bidang tanah ('tanah tersebut'), menggadai tanah tersebut kepada Standard Chartered Bank ('bank pendulu') sebagai cagaran kepada pinjaman yang diberikan kepadanya. Perayu kemudiannya telah ingkar, dan bank pendulu telah memulakan prosiding penutupan gadai janji terhadap perayu. Pada 4 Oktober 1985, bank pendulu memperolehi perintah mahkamah untuk menjual tanah tersebut dengan cara lelong awam. Pada hari sebelum lelong itu, pihak-pihak itu bersetuju untuk menangguhkan lelong itu tanpa had masa untuk membolehkan perkara itu diselesaikan di luar mahkamah. Bagaimanapun, perundingan untuk penyelesaian gagal. Berikutan dengan itu, bank pendulu memfailkan saman dalam kamar, untuk tarikh lelong yang baru dan arahan lanjut untuk jualan. Sementara itu, bank pendulu, yang merupakan bank asing, telah memindahkan dan meletak hak semua perniagaan banknya di Malaysia kepada Standard Chartered Bank Malaysia Bhd ('bank pengganti'), satu entiti undang-undang berasingan yang diperbadankan secara tempatan, mengikut satu perjanjian jual beli, dan selepas memperolehi kelulusan Menteri Kewangan di bawah s 49(7) Akta Bank dan Institusi-Institusi Kewangan 1989 ('Akta

tersebut'). Mahkamah juga telah memberikan perintah letak hak kepada bank pengganti di bawah s 50(1) Akta tersebut, dan menetapkan 1 Julai 1994 sebagai tarikh efektif pemindahan perniagaan itu. Kemudiannya, saman dalam kamar yang difailkan oleh bank pendulu telah didengar, dan mahkamah menetapkan 13 Mac 1995 sebagai tarikh lelong yang baru. Semua prosiding dalam perkara ini diteruskan dengan nama bank pendulu sebagai plaintif. Semasa lelong, penentang kedua dan ketiga berjaya membuat tawaran untuk tanah tersebut, dan mereka membayar 10% daripada harga beli. Pengisytiharan jualan masih mencatatkan nama bank pendulu sebagai plaintiff. Pada 3 April 1995, perayu memfailkan permohonan untuk mengenepikan lelong itu dan untuk membatalkan penjualan tanah tersebut, atas alasan-alasan bahawa: (i) kegagalan bank pendulu untuk menyebut bank pengganti sebagai plaintif dalam pengisytiharan jualan yang dikeluarkan menurut arahan untuk jualan merupakan suatu pelanggaran ss 258(1)(b) dan (2)(a) Kanun Tanah Negara 1965 ('KTN'); (ii) berlakunya pelanggaran itu bererti ketidakwajaran telah berlaku dalam jualan yang berlangsung kemudiannya dalam maksud yang disebutkan dalam *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294 ('kes *Siland*') yang membolehkan perayu sebagai penggadai untuk membatalkan jualan itu; dan (iii) jualan yang tidak sah di sisi undang-undang itu telah memudaratkan hak perayu untuk menebus tanah tersebut. Hakim perbicaraan memutuskan bahawa ss 258(1)(b) dan (2)(a) tidak dilanggar, dan bahawa tidak ada tindakan tidak wajar seperti yang dibayangkan oleh kes *Siland*. Permohonan perayu dengan itu ditolak dengan kos, dan pengeluaran Borang 16F kepada penentang kedua dan ketiga disahkan. Perayu telah membuat rayuan. Isu yang berbangkit ialah sama ada bank pendulu boleh meneruskan prosiding dalam namanya selepas ia telah menjual dan meletak hak semua perniagaan banknya di Malaysia kepada bank pengganti.

Diputuskan, menolak rayuan dengan kos, dan mengesahkan pendapat hakim perbicaraan:

(1) Mahkamah tidak nampak bagaimana peruntukan-peruntukan s 258(1)(b) dan (2)(a) KTN telah dilanggar oleh bank pendulu kerana semua langkah-langkah prosedur yang dibuat oleh dua sub-seksyen itu telah dipatuhi oleh bank pendulu melalui pelelong yang dilantik oleh mahkamah dan penolong kanan pendaftar (lihat ms 623F).

(2) Perintah letak hak adalah dalam keadaan di mana tidak terdapat keperluan dalam undang-undang untuk membuat penggantian plaintif, dan bahawa bank pengganti adalah dianggap sebagai pihak dalam semua prosiding yang dimulakan oleh atau terhadap bank tendahulu. Ini bermakna bahawa bank pengganti adalah sebetulnya pihak dalam perintah jualan yang diperolehi (lihat ms 623G dan 624A–B).

(3) Seksyen 50(3) Akta tersebut memperuntukkan, antara lain, bahawa pemindahan apa-apa harta atau perniagaan berikutan daripada perintah Mahkamah Tinggi di bawah sub-s (1), hendaklah, pada dan dari tarikh pemindahan itu, menjadi terletakhak pada atau dipegang oleh penerima pindahan, dan perintah itu hendaklah berkuatkuasa mengikut maksudnya walau apa pun apa-apa jua dalam mana-mana undang-undang atau dalam mana-mana hukum undang-undang. Oleh itu, berdasarkan perintah letak hak, telah terdapat pemindahan kepentingan daripada satu entiti undang-undang kepada yang lain (lihat ms 623D–H).

(4) Di bawah peruntukan A 15 k 7(2) Kaedah-Kaedah Mahkamah Tinggi 1980, penggantian pihak yang betul boleh dilakukan untuk meneruskan prosiding. Bagaimanapun, berdasarkan perkataan-perkataan pengecualian 'walau apa pun apa-apa jua dalam mana-mana undang-undang atau dalam mana-mana hukum undang-undang' yang terdapat dalam s 50(3) Akta tersebut, tidak ada keperluan untuk perintah yang rasmi di bawah A 15 k 7(2) untuk menjadikan lazim kedudukan bank pengganti (lihat ms 624H–I).

(5) Jika sesungguhnya terdapat luar aturan yang dilakukan oleh bank pendulu, ia hanyalah kegagalan untuk menarik diri dan membenarkan jualan dilakukan oleh bank pengganti. Ini boleh dicapai dengan hanya mengeluarkan perintah letak hak (lihat ms 624I).

(6) Dalam apa keadaan pun, peninggalan itu bukanlah satu bentuk ketidakwajaran yang dibayangkan oleh kes *Siland*, di mana kelakuan yang dipersoalkan merupakan kelakuan tidak mengendahkan secara melulu kepentingan pihak yang berkepentingan. Itu tidak boleh terjadi di sini, kerana apa yang dicabar bukanlah kepentingan mana-mana pihak tetapi salah guna nama di mana berdasarkan peruntukan tertentu perintah letak hak dan peruntukan s 50(3) Akta tersebut, tidak boleh memberikan kesan yang menyebabkan pengisytiharan jualan tidak wajar dan jualan kemudiannya dibatalkan (lihat ms 625A–B); *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294 dibeza; *Standard Chartered Bank v Asia Transport Services Sdn Bhd & Ors* [1996] 1 MLJ 157 ditolak.

(7) Disebabkan mahkamah ini telahpun memutuskan bahawa tidak ada pelanggaran kehendak statutori ss 258(1)(b) dan 2(a) KTN, persoalan kemudaratan tidak timbul (lihat ms 626B).]

Notes

For cases on sale of land by auction, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2435–2819.

For cases on parties, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2362–2498.

Cases referred to

M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor [1994] 1 MLJ 294

Standard Chartered Bank v Asia Transport Service (M) Sdn Bhd & Ors [1996] 1 MLJ 157

Legislation referred to

Auction Sales Enactment (FMS Cap 81) ss 4, 4(2)
Banking and Financial Institutions Act 1989 ss 49(7), 50(1), 50(3)
Companies Act 1965
National Land Code 1965 ss 258(1)(a), (b), (2)(a)
Rules of the High Court 1980 O 15 r 6(2)(b)(ii), r 7(2), O 31, O 83

Appeal from: Originating Summons No F981–81 (High Court, Kuala Lumpur)

KS Narayanan (*Saranjit Singh* with him) (*KS Narayanan Associates*) for the appellant.

Tang Woh Heng (*Steven Wong* with him) (*Arifin & Partners*) for the first respondent.

Cecil Abraham (*RS Nathan* with him) (*Shearn Delamore & Co*) for the second respondent.

Manjit Singh Sachdev (*Edward Chan* and *Rajesh Kumar* with him) (*Manjit Singh Sachdev Mohammad Radzi & Partners*) for the third respondent.

Cur Adv Vult

Siti Norma Yaakob JCA (delivering the judgment of the court): The axis of the dispute in these proceedings is whether Standard Chartered Bank — a foreign bank and the first respondent before us — can, after 1 July 1994, continue to pursue matters relating to these proceedings in its name as after that date it had already sold and vested all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd, a separate legal entity incorporated locally and which we refer to as 'the successor bank'. The first respondent, as the predecessor bank, states it can — a contention that was upheld by the trial judge; whilst Leong Moh Sawmill Co Sdn Bhd, the appellant before us, states otherwise; and to appreciate the many issues raised by them, we begin by setting out the factual background of the case.

At all material times, the appellant was the registered proprietor of two separate parcels of land held under HS(D) 17288 PT 253, Mukim Batu, Wilayah Persekutuan and HS(D) 14833 PT 9497 also in the Mukim of Batu, Wilayah Persekutuan (collectively referred to as 'the lands'). It charged the lands to the predecessor bank — then known as 'Chartered Bank' — to secure loans granted to it by the predecessor bank in 1979. The appellant defaulted in the repayment of the loans and the predecessor bank as the chargee instituted foreclosure proceedings against the appellant in Kuala Lumpur Originating Summons No F 981/84.

On 4 October 1985, the predecessor bank obtained an order of court to sell the lands by way of public auction. Since that date, various attempts at auctioning the lands were either aborted or postponed on various grounds and finally fixed for 2 June 1993. However, on the eve of the auction date, the parties agreed to adjourn the auction indefinitely to enable a contributory to the appellant to settle the matter out of court. In the meantime on 25 March 1988, by an order of court the appellant was compulsorily wound up under the provisions of the Companies Act 1965 in Winding-Up Petition No 42–22–86 instituted by the Inland Revenue Department against the appellant.

When the appellant's attempts at settlement failed in 1993, the predecessor bank filed a summons in chambers on 2 November 1993 for a fresh auction date and further directions for sale. This summons for directions was not heard until a year later as the court file had gone missing, and whilst waiting for the file to be reconstructed a number of events occurred that effected the status and business of the predecessor bank.

On 12 April 1994, after having obtained the approval of the Minister of Finance under s 49(7) of the Banking and Financial Institutions Act 1989 ('the Act') and by way of a sale and purchase agreement, the predecessor bank transferred and vested all its banking business in Malaysia to the successor bank. In Kuala Lumpur Originating Summons No D3–24–88–94, both the predecessor bank and the successor bank jointly applied to give effect to the sale and purchase agreement under s 50(1) of the Act. On 28 April 1994, the court granted a vesting order and inter alia fixed 1 July 1994 as the effective date for the transfer of the business of the predecessor bank to the successor bank.

By November 1994, the court's missing file was reconstructed and on 1 December 1994, the summons for directions filed by the predecessor bank to fix a new date of auction and further directions for sale was heard. 13 March 1995 was identified as the new auction date together with other terms and conditions of sale. It must be noted here that despite the change in the status of the predecessor bank after the transfer date, all proceedings in this matter continued in the name of the predecessor bank as the plaintiff. Thus the summons in chambers carried no change in the heading and citation and the proclamation of sale upon which the auction was conducted on 13 March 1995 still had the predecessor bank as the plaintiff.

At the auction on 13 March 1995, the second and third respondents bidded successfully for one parcel of each of the lands with the second respondent agreeing to pay RM11,955,000 for its bid and the third respondent RM4,675,000. Each paid 10% of the respective purchase prices at the date of the auction with the balance to be paid within 90 days of sale, ie on or before 13 June 1995.

However, upon being made aware by a contributory of the existence of the vesting order, the appellant with the sanction of the official receiver filed an application on 3 April 1995 seeking:

(1) to set aside the auction held on 13 March 1995 and that the sale of the lands to the second and third respondents be annulled and that the deposits made by them be refunded to them;

(2) to set aside the proclamation of sale issued pursuant to the directions for sale;

(3) a fresh auction sale and fresh directions be given in respect of the same lands; and

(4) all further proceedings arising from the auction held on 13 March 1995 be stayed pending disposal of the application.

As this application would definitely affect the rights of the second and third respondents as the bona fide purchasers for value of the lands, they were allowed to intervene in the proceedings. On 15 July 1995, Abdul Aziz Mohammed J dismissed the appellant's application with costs, stayed the issuance of Form 16F in favour of the second and third respondents and extended time to them to settle the balance of the purchase prices for the lands. It is to appeal against this decision that the appellant, who was the defendant in the court below, is now before us.

The following question was raised by the appellant before us. Since there has been a change in the identity of the chargee, is there a need for the title of the action to be substituted to reflect the identity of the true chargee before the auction can be enforced? The appellant answers it positively as the change is not a mere change in name (as was the case when the predecessor bank initiated the foreclosure proceedings in the name of Chartered Bank) but that a new legal entity has been created with the incorporation of the successor bank which has been granted a valid banking licence to operate in Malaysia. It was under these circumstances that the localized successor bank took over the rights and liabilities of the predecessor bank in Malaysia whilst the latter continues to operate as a separate legal entity elsewhere internationally. It is for this very reason that the appellant contends that the failure by the predecessor bank to cite the successor bank as the plaintiff in the proclamation of sale issued pursuant to the directions for sale ordered on 1 December 1994 constitutes a breach of ss 258(1)(b) and (2)(a) of the National Land Code 1965 ('the NLC'), and that breach amounts to an impropriety in the subsequent conduct of the sale within the meaning enunciated in the case of *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294 ('*Siland*'s case') so as to entitle the appellant as the chargor to nullify the sale.

Sections 258(1)(b) and (2)(a) of the NLC are worded as follows:

> 258 (1) Where any such order has been made, it shall be the duty of the Registrar of the Court —
>
> (a) .....
>
> (b) to see that the sale is publicly advertised in accordance with rules of court or, in the absence of any rule in that behalf, the practice customarily adopted in the State.
>
> (2) The chargee on whose application the order was made shall —

(a) prepare the conditions of sale, in accordance with the terms of the order and any determination thereunder by the Registrar of the Court;

In *Siland*'s case which also concerned the public auction of a charged property, one of the issues raised before the (then) Supreme Court was whether a successful bidder could apply to vary the terms and conditions of the order of sale without giving due notice of such application to the chargor. In that case, the successful bidder — after defaulting in its obligations to settle the balance of the purchase price within the time limited by the conditions of sale — had applied to the senior assistant registrar ('the SAR') to extend the completion date; and without service of such application to the chargor, obtained such an order. On appeal, the trial judge held that the SAR had no right to make such an order without giving the chargor the right to be heard, a decision that was confirmed by the Supreme Court on the grounds that any variation in the order of sale or the terms or conditions made in the absence of or without service of the required notice to the chargor is ultra vires the authority to sell under the NLC. The conduct of the successful bidder in obtaining the extension of time to complete the sale to the exclusion of the chargor was held to be improper by the Supreme Court, and this entitled the chargor to have the order for extension set aside and the sale annulled.

Abdul Aziz Mohammed J, in the circumstances of this instant case, held that the provisions of ss 258(1)(b) and (2)(a) of the NLC have not been breached by the predecessor bank and the fact that the proclamation of sale maintained the predecessor bank as the plaintiff cannot amount to conduct being improper as was envisaged by *Siland*'s case. We now have to consider whether that finding has been correctly made.

It must be remembered that the appellant is not impugning the order of sale but that its only complaint is that the proclamation of sale describes the wrong party as the chargee. This is so as after 1 July 1994, all matters pertaining to the sale of the lands should be conducted by the successor bank and for this reason, the appellant contends that there is a need to substitute the successor bank as the plaintiff in the proceedings and described as such in the proclamation of sale as was done in the case of *Standard Chartered Bank v Asia Transport Service (M) Sdn Bhd & Ors* [1996] 1 MLJ 157, a decision that was handed down a few days after the decision which is now being impugned was made.

We will start by considering whether the provisions of ss 258(1)(b) and (2)(a) of the NLC have been breached by the predecessor bank. These two sub-sections set out the procedure to be followed after an order of sale has been obtained and prior to the execution of the sale itself. Section 258(1)(b) is directed to the registrar of the High Court and it empowers such registrar to see that the sale is advertised publicly in accordance with any rules of court or in the absence of such rules the customary practice in the state. There are no specific rules regulating the procedure for advertising a judicial sale by public auction. The Rules of the High Court 1980, where one expects such procedure to be set out, is silent on this although there is a chapter on charge actions in O 83 and another chapter, O 31, that

A makes provisions as to the directions to be given when carrying out such sale.

However, there are provisions in s 4 of the Auction Sales Enactment (FMS Cap 81) ('the Enactment') regulating what particulars a public notice or proclamation of sale should contain and the onus is on the B auctioneer conducting the sale to prepare and advertise such sale. What happens in practice is that the auctioneer named by the court to conduct the sale, working together with the chargee, draws up the proclamation of sale containing all particulars as required by s 4 and submits the proclamation of sale for approval to the SAR. Once approved, the auctioneer will take all the necessary steps to have the proclamation of sale advertised. C In this way, the SAR would have seen that the sale has been publicly advertised as is required of him under ss 258(1)(b) and (2)(a) of the NLC.

In this instance, a perusal of the reconstructed file shows that the SAR had, on 9 December 1994, informed the auctioneer of his appointment to sell the lands by public auction on 13 March 1995 at 9am and the D auctioneer was also directed to prepare the proclamation of sale to contain all necessary particulars and submit the same for approval by the SAR. A draft of the proclamation of sale was submitted by the auctioneer to the SAR on 19 December 1994 for approval and the approved proclamation of sale was advertised by the auctioneer seven days before the sale, as is E required by s 4(2) of the Enactment.

Clearly, we do not see how the provisions of ss 258(1)(a) and (2)(b) of the NLC have been breached by the predecessor bank as all procedural steps laid down by the two sub-sections have been adhered to by the predecessor bank through the court-appointed auctioneer and the SAR. However, what remains to be determined is whether the alleged impropriety F of not amending the heading of the proceedings to disclose the name of the successor bank as the chargee in the proclamation of sale is the sort of impropriety envisaged by *Siland*'s case.

We say 'no' for the following reasons.

The vesting order of 28 April 1994 was such that there is no G requirement in law to effect a substitution of the plaintiff. Paragraph 2(d) of the order states that any reference to the predecessor bank in any existing instrument of any nature vesting any title, assets or liability on the predecessor bank shall, without any further act by the predecessor bank, be construed as if the reference has been substituted with a reference to the H successor bank with effect from 1 July 1994. Paragraph 2(k) of the vesting order also states that where any right or liability of the predecessor bank is to be transferred to the successor bank, then the latter shall, without any further act of the former, have the same rights, powers and remedies like commencing or defending any legal proceedings including rights and liabilities in respect of any legal proceedings pending before 1 July 1994 by I or against the predecessor bank.

Likewise, para 2(l) of the vesting order which states that any judgment or award obtained by or against the predecessor bank and which was not complied with or yet to be satisfied shall — with effect from 1 July 1994,

and without any further act of the predecessor bank — be enforceable by or against the successor bank as if the latter had become a party to the judgment or award. We consider that the effect of this particular order is that the successor bank is deemed to be a party in all proceedings that were initiated by or commenced against the predecessor bank, and for practical purposes, this means that the successor bank is very much a party to the order of sale obtained on 4 October 1985.

It was pursuant to the various paragraphs in the vesting order that we have singled out that the trial judge likened the situation of the predecessor bank leaving its shell and the successor bank filling in the space left vacant by the predecessor bank. Thus, the transfer of business was to take place without any further administrative acts to be done by either the predecessor bank or the successor bank.

The vesting order was made under s 50(1) of the Act and sub-s (3) of the same section states as follows:

> (3) Where the order of the High Court under sub-section (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

The only written law dealing with parties to an action is found in the Rules of the High Court 1980, and O 15 r 7(2) specifically deals with the change of parties under certain circumstances. For ease of reference, we reproduce that particular order and rule:

> (2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

Thus, by virtue of the vesting order, there has been a transmission of interest from one legal entity to another and under the provisions of O15 r 7(2), there may be a substitution of the proper party to continue with the proceedings. However, by virtue of the qualifying words 'notwithstanding anything in any law or in any rule of law' appearing in s 50(3) of the Act, we consider that there is no necessity for a formal order under O 15 r 7(2) to regularize the position of the successor bank. If indeed there was any irregularity committed by the predecessor bank, it was merely its failure to withdraw and allow the sale to be conducted by the successor bank. That can be achieved by the mere production of the vesting order. In any event

A that omission, we consider, is not the sort of impropriety envisaged by the *Siland*'s case, where the conduct sought to be impugned amounts to a reckless disregard to the interests of an interested party. That cannot be the case here as what is being challenged is not the interest of any party but the wrong use of a name which — by virtue of the particular provisions of the vesting order, which we have already averred to, and the provisions of B s 50(3) of the Act — cannot have the effect of rendering the proclamation of sale improper and the subsequent sale annulled.

Since our attention was drawn to the case of *Standard Chartered Bank v Asia Transport Services Sdn Bhd & Ors* [1996] 1 MLJ 157, we need to say a few words about the decision in that case. It concerns the status of the C same predecessor bank and the successor bank and the effect the same vesting order had on them. A joint application was made by both banks to have the successor bank substituted as plaintiff in place of the predecessor bank pursuant to O 15 r 7(2). The deputy registrar who heard the application dismissed it with costs on the grounds that both banks had no D locus standing to bring the application as the predecessor bank had divested all its rights to the successor bank who in turn is not a party to the action. The registrar held that the successor bank should have applied for leave to intervene under O 15 r 6(2)(b)(ii) of the Rules of the High Court 1980 before applying to have itself substituted under r 7(2) of the same Order. On appeal, Richard Tallala J had this to say at p 163 of the report:

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> ... As to the submission of counsel for the defendant that a stranger to the proceedings seeking to get in should first obtain leave to intervene therein, I could find nothing in the Rules to support such a proposition. It is true that sub-r (2) does not stipulate who is entitled to make the application. However, by reference to sub-r (3) it is envisaged that any person is entitled F to make it, and that will include a stranger to the proceedings whom the sub-rules by necessary implication embrace any way. In this instance, the Malaysian bank was not a person seeking relief in respect of a right independent of the English bank but rather relief in respect of the same right against the same party namely the defendant. In short, the Malaysian bank was seeking to step into the shoes of the English bank. The Malaysian bank to whom the right of action of the English bank had been assigned or G on whom it has devolved was seeking not merely to be added as a party, or to intervene so to speak, but to be plaintiff in the action. Accordingly, the Malaysian bank had to do no more than make an application under O 15 r 7(2) (again there is no restriction in the subrule as to who is entitled to make the application) for an order that the proceedings be carried on as if the Malaysian bank had been substituted for the English bank which it is H believed is what it actually did, but the application was dismissed and against the dismissal there was no appeal.

On that premise, the learned judge confirmed the dismissal of the application insofar as it was brought by the successor bank, but set aside the registrar's order on the application of the predecessor bank to substitute the successor I bank as plaintiff.

With respect, we are not bound by the decision of a lower tribunal particularly when the decision is obiter dicta and where the learned judge himself entertained doubts as to whether an application under O 15 r 7(2)

was necessary to substitute the successor bank as the plaintiff in view of the vesting order.

Lastly, we come to the appellant's submission that since the sale was conducted in breach of the procedures laid down by ss 258(1)(b) and (2)(a) of the NLC, the illegal sale had prejudiced the appellant's right to redeem the lands.

To begin with, we have already concluded that there has been no breach of the statutory requirements of ss 258(1)(b) and (2)(a) of the NLC and as such, the question of prejudice does not arise.

In any event, the right to redeem has always been with the appellant all along, from the time it charged the lands to the predecessor bank up to the time the order of sale was made on 4 October 1985 and extended further right up to the eve of the auction. Yet, the appellant did not exercise that right during those intervening years although attempts at getting its contributory to do so failed in 1993. For the appellant to complain that its right to redeem the lands has been thwarted by the sale does not stand to reason as it would have been cheaper for it to redeem the lands earlier on in the proceedings than to wait until the auction to do so as it would have to meet not only the balance of the outstanding loans but also the interest accumulated with the passage of time. Thus it is only reasonable to expect the appellant to have exercised its right of redemption earlier on in the proceedings and the very fact it did not can only mean that it was not in a position, financially, to do so. That may well explain the reason it was placed under liquidation in 1988.

If anybody at all who would complain of being prejudiced by the auction, it must be the second and third respondents — the bona fide purchasers for value who had bidded successfully for the lands and are willing and capable to pay the balance of the purchase prices but whose rights of ownership have been stayed following the present proceedings. In the case of the second respondent, it is purchasing one of the lands at double the reserved price, a plus factor for which the appellant should have no cause to complain at all.

For the reasons that we have given, we dismiss this appeal with costs, the findings of the trial judge are affirmed and we order that the deposit be paid proportionately to the three respondents to account for their taxed costs.

Order accordingly.

Reported by Isabel Liong